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(2) Two members to represent growers who market their walnuts through the handler that handles 35% or more of the crop;

(3) Two handler members to represent handlers that do not handle 35% or more of the crop;

(4) One member to represent growers from District 1 who market their walnuts through handlers that do not handle 35% or more of the crop;

(5) One member to represent growers from District 2 who market their walnuts through handlers that do not handle 35% or more of the crop;

(6) One member to represent growers who market their walnuts through handlers that do not handle 35% or more of the crop shall be nominated at large from the production area; and,

(7) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1.* District 1 encompasses the counties in the State of California that lie north of a line drawn on the south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2.* District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

(d) The Secretary, upon recommendation of the Board, may reestablish districts, may reapportion members among districts, and may revise the groups eligible for representation on the Board as specified in paragraphs (a) and (b) of this section: Provided, That any such recommendation shall require at least six concurring votes of the voting members of the Board. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

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(3) The equitable relationship between Board apportionment and districts;

(4) Changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more major handlers;

(5) Other relevant factors.

[73 FR 11337, Mar. 3, 2008]

§ 984.36 Term of office.

The term of office for Board members and their alternates shall be for a period of two years ending on August 31 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

[74 FR 18464, Apr. 23, 2009]

§ 984.37 Nominations.

(a) Nominations for all grower members shall be submitted by ballot pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower, regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchards in both grower districts, he or she shall advise the Board of the district in which he/she desires to vote. The person receiving the highest number of votes for each grower position shall be the nominee.

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler

member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) A calculation to determine whether or not a handler who handles 35 percent or more of the crop shall be made prior to nominations. For the first nominations held upon implementation of this language, the 35 percent threshold shall be calculated using an average of crop handled for the year in which nominations are made and one year's handling prior. For all future nominations, the 35 percent handling calculation shall be based in the average of the two years prior to the year in which nominations are made. In the event that one handler handles 35% or more of the crop the membership of the Board, nominations shall be as follows:

(1) Nominations of growers who market their walnuts to the handler that handles 35% or more of the crop shall be conducted by that handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(2) Nominations for the two handler members representing the major handler shall be conducted by the major handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(3) Nominations on behalf of all other grower members (Groups (b)(4), (5) and (6) of § 984.35) shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Groups (Groups (b)(4), (5) and (6) of § 984.35), re-

gardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts he or she shall advise the Board of the district in which he or she desires to vote. The person receiving the highest number of votes for grower position shall be the nominee.

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this subsection. However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this subsection shall be the nominee for that position.

(d) Each grower is entitled to participate in only one nomination process, regardless of the number of handler entities to whom he or she delivers walnuts. If a grower delivers walnuts to more than one handler entity, the grower must choose which nomination process he or she participates in.

(e) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(f) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by September 1 of any

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such year, the Secretary may select such member without nomination.

(g) The Board may recommend, subject to the approval of the Secretary, a change to these nomination procedures should the Board determine that a revision is necessary.

[73 FR 11337, Mar. 3, 2008]

§ 984.38 Eligibility.

No person shall be selected or continue to serve as a member or alternate to represent one of the groups specified in § 984.35(a)(1) through (6) or § 984.38(b)(1) through (6), unless he or she is engaged in the business he or she is to represent, or represents, either in his or her own behalf or as an officer or employee if the business unit engaged in such business. Also, each member or alternate member representing growers in District 1 or District 2 shall be a grower, or officer or employee of the group he or she is to represent.

[73 FR 11338, Mar. 3, 2008]

§ 984.39 Qualify by acceptance.

Any person nominated to serve as a member or alternate member of the Board shall, prior to selection by USDA, qualify by filing a written qualification and acceptance statement indicating such person's willingness to serve in the position for which nominated.

[73 FR 11338, Mar. 3, 2008]

§ 984.40 Alternate.

(a) An alternate for a member of the Board shall act in the place and stead of such member in his or her absence or in the event of his or her death, removal, resignation, or disqualification, until a successor for his or her unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his or her alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his disability or a vacancy, his or her alternate may designate, subject to the

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disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place of such member.

[73 FR 11338, Mar. 3, 2008]

§ 984.41 Vacancy.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member or alternate, or any need to select a successor through failure of any person selected as a member or alternate to qualify, shall be recognized by the Board causing a nomination to be made by the appropriate group and certifying to the Secretary a new nominee within 60 calendar days.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976]

§ 984.42 Expenses.

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses incurred by them in the performance of their duties under this part.

[73 FR 11338, Mar. 3, 2008]

§ 984.43 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 984.44 Duties.

The duties of the Board shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;